

**NORTH CAROLINA COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL
DISABILITIES AND SUBSTANCE ABUSE SERVICES**

Commission Minutes

**Double Tree Hotel
1707 Hillsborough Street
Raleigh, NC 27605**

Thursday, August 22, 2013

Attending:

Dr. Greg Olley, James Bowman, Amie Brendle, Anna Cunningham, Roger Dillard, Dr. James Finch, R. Michael Grannis, Dr. Tyehimba Hunt-Harrison, F. Michael Maybee, Beverly Morrow, Kevin Oliver, John Owen, Pamela Poteat, Elizabeth Ramos, Dr. Marian Spencer, Dr. Peggy Terhune, Don Trobaugh, David Turpin, Carol Vale, Linda Warden

Excused Members:

Dr. Richard Brunstetter, Nancy Moore, Phillip Mooring, Ann Shaw

Division Staff:

Jim Jarrard, W. Denise Baker, Steven E. Hairston, Marta T. Hester, Brenda T. Smith

Others:

J. Luckey Welsh, Laura White, Richard Slipsky, Margaret Withrow, Dr. Steven D. Peters, Dr. John Helminski, Dr. Mark Hazelrigg, Dr. David Hattem

Call to Order:

Dr. Greg Olley, Chairman, NC Commission for Mental Health, Developmental Disabilities and Substance Abuse Services (Commission) called the meeting to order at 9:36 a.m. He asked for a moment of reflection, welcomed everyone to the meeting, and reviewed the ethics reminder. Following introductions, he announced agenda changes and reminded members about the ethics training requirements and Statement of Economic Interest (SEI) filing deadline. Dr. Olley also announced changes to the agenda by advising that Jim Jarrard, Deputy Director, NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services (NC DMH/DD/SAS) would deliver the Director's report in Dave Richard's stead. Dr. Olley indicated that the Director's report would be presented immediately after the approval of the minutes.

Approval of Minutes:

Upon motion, second, and unanimous vote, the Commission approved the minutes of the May 23, 2013 meeting.

Division Director's Report

Jim Jarrard discussed the highlights of the Appropriations Act of 2013 (Session Law 2013-260) applicable to mental health, developmental disabilities, and substance abuse services. These included the following:

- State Budget (overview)
- Alcohol and Drug Abuse Treatment Centers
- Controlled Substances Reporting System (CSRS)
- NC Child Treatment Program
- New Broughton Hospital and Broughton Hospital Beds
- Three-Way Contracts

- LME-MCO Administration (as part of this discussion Mr. Jarrard also noted the appropriation for LME services, which was \$337,743,610.00 for State Fiscal Year 2013-14)
- Community Care of North Carolina Study
- Department of Justice Settlement Agreement
- NC Families Accessing Services (NC Fast)
- State Telepsychiatry Program
- Supplemental Short-Term Assistance for Group Homes
- NC Tobacco Use Quitline

Copies of Mr. Jarrard's presentation on the budget were disseminated, along with a handout on *2013-14 Legislative Session: Enacted Legislation Impacting NC DMH/DD/SAS*; this document listed only those bills about which the Commission members requested a status report during a prior meeting

- Session Law 2013-4, *Temporary Funding/Group Homes & SCUs*
- Session Law 2013-124, *Methamphetamine/Offense/Penalties*
- Session Law 2013-18, *Incapacity to Proceed Amendments*
- Session Law 2013-152, *Revise Controlled Substance Reporting*
- Session Law 2013-85, *Effective Operation of 1915(b)(c) Waiver*
- Session Law 2013-258, *Guardianship Roles of MHDDSA Providers*
- Session Law 2013-308, *Involuntary Commitment Custody Orders*

Division Director's Report

J. Luckey Welsh, Interim Director, NC Division of State Operated Healthcare Facilities (DSOHF) reported on the status of state hospitals as well as the budget highlights applicable to facilities and services under the purview of DSOHF. Mr. Welsh indicated the Alcohol and Drug Abuse Treatment Centers (ADATCs) are the agency's most underfunded facilities. He further elaborated that the 12% reduction passed during the 2013-14 legislative session will result in the reduction of 60 beds statewide in the ADATCs and inadequate funding levels to meet staffing needs. He also mentioned the Walter B. Jones ADATC has a special treatment program for pregnant and postpartum women and their infants as part of the Eastern Regional Women and Infants Project. Mr. Welsh stated this program may be greatly affected by this funding reduction, despite the fact that it is the only on-site "maternal unit" in any state facility in the state. He noted Broughton Hospital will be surveyed in December, and an additional 19 beds will be open in 90 days to allow more patients to be served in that area. Mr. Welsh added that Central Regional Hospital was approved by the Joint Commission survey with full accreditation, although construction is running behind schedule. He further stated the neuro-medical facilities are transitioning to skilled facilities.

W. Denise Baker, Division Affairs Team Leader, Operations Support Section, NC DMH/DD/SAS, explained the status of the State Facility Environment rule in response to Mr. Welsh's question regarding a timeframe. The rule will be submitted to the Office of Administrative Hearings whereupon it will be published for a 60-day public comment period to allow the public to respond to the rule. The rule and any comments received will then be presented to the Rules Committee and to the Commission for final adoption.

Mr. Welsh advised the Commission members all employees at state psychiatric hospitals are required to receive the flu vaccine.

Mr. Welsh received the following questions and comments from members of the Commission:

- Dr. Olley, R. Michael Grannis, and Don Trobaugh all questioned how the Commission can be more effective in its role to educate and advocate for mh/dd/sa services with members of the state legislature. Commission members also questioned the source of the information being delivered to

the state legislature. Both Mr. Welsh and Steven E. Hairston, Section Chief, Operations Support, NC DMH/DD/SAS, explained how the state legislature receives its information.

- Mr. Trobaugh also requested clarification regarding whether the data reported to the state legislature was coming from different sources. Mr. Welsh explained some of the data from the Fiscal Research Division at the state legislature was reported incorrectly; however, the NC Department of Health and Human Services and DSOHF can only supply information upon the request from the state legislature and if invited to do so. Mr. Welsh also reiterated the ADATCs are already underfunded and the detrimental effect a 12% cut will have.
- Dr. James Finch and Elizabeth Ramos added that, while it is a challenge knowing how to provide timely information to the state legislature, it is also important, because they control the budget.
- Mr. Grannis thanked Mr. Welsh and his staff and suggested the Department's legislative liaison come to a future Commission meeting to educate the membership on avenues to use to be helpful in carrying out the agency's mission.
- Dr. Olley agreed to write another letter to the DHHS Secretary or her legislative liaison inviting her to attend either the next meeting or a future meeting of the Commission.
- Dr. Peggy Terhune stated the DHHS Secretary is busy responding to requests and recommended the Commission members contact the legislature directly to provide information. She also asked what would it take for a person to transition from a hospital to community living.
- John Owen asked how the Department of Justice Settlement is affecting discharges. While Mr. Welsh noted the unavailability of group homes, he mentioned the Managed Care Organizations' (MCOs) ability to move people through the system.

Chairman's Report

Dr. Olley announced that since Phillip Mooring's term expired, the position of Vice Chairperson of the Commission is now open. Pamela Poteat, Commission member, introduced and nominated Dr. Tyehimba Hunt-Harrison for the position of Vice Chairperson. The nomination was seconded by Mr. Owen, approved by the Commission, and Dr. Hunt-Harrison accepted.

Upon motion, second and unanimous vote, the Commission approved the appointment of Dr. Tyehimba Hunt-Harrison as the Vice- Chairperson of the NC Commission for MH/DD/SAS.

Dr. Olley directed the Commission members interested in purchasing the North Carolina Council of Community Programs Directory for 2013-14 to Steven E. Hairston for assistance. He reiterated he will draft another letter inviting the DHHS Secretary to a Commission meeting. The members agreed to send any questions for the Secretary to Dr. Olley or Ms. Baker in advance of the meeting. Dr. Olley reminded the members that when their terms expire, they are required to remain on the Commission until their successor is appointed and approved. The three new appointees to the Commission are Dr. Roger Moore, Melissa Gott and Dr. Brian Sheitman.

New Business consisted of approval of the 2014 Commission meeting calendar.

Upon motion, second, and unanimous vote, the Commission approved the 2014 meeting calendar.

Advisory Committee Report:

Anna Cunningham, Chairperson, distributed handouts, which included the Advisory Committee Decision Matrix and the Suggested Database items for Matrix for the NC Commission on MHDDSA . During the Advisory Committee's July 25, 2013, meeting, Stuart Berde, Section Chief, Advocacy and Customer Service, NC DHM/DD/SAS, delivered a presentation about the roles and responsibilities of his section. Advisory Committee members were then tasked with reviewing the *Proposed Guidelines for Treatment of Individuals Committed Subsequent to a Determination of Incapacity to Proceed, Required by Session Law 2013-18, Incapacity to Proceed Amendments*, and providing written comments to Ms. Baker. The Advisory Committee also reviewed the updated Advisory Committee Working Matrix Model, Prioritized

Action Items, and Finalized Workgroup Assignments. The Advisory Committee decided to ensure any issues selected address health and safety and gaps in services. There will be two workgroups that will focus on the following topics: (1) Rights and Services and (2) Housing and Transportation. Each topic will address the following components: communication, education and training; employment; information technology; and policies and procedures. Ms. Cunningham advised that the Advisory Committee plans to finalize its mission statement and begin working within assigned workgroups at the October 24, 2013, meeting.

Rules Committee Report:

Chairman Kevin Oliver stated the Rules Committee met on July 25, 2013, to discuss the Proposed Amendment of Rule 10A NCAC 27G .6702, *Operations (Forensic Screening and Evaluation Services for Individuals of all Disability Groups)* and the Proposed Amendment of Rule 10A NCAC 27H .0200, *Training and Registration of Forensic Evaluators*. Both of these rules will be presented again today. During the July Rules Committee meeting, Dr. David Hattem, Forensic Psychologist, Central Regional Hospital, gave a presentation on Training and Certification of Forensic Evaluators.

Proposed Amendment of Rule 10A NCAC 27G. 6702 Operations (Forensic Screening and Evaluation Services for Individuals of all Disability Groups) and Proposed Amendment of Rules 10A NCAC 27H.0200 – Training and Registration of Forensic Evaluators

Laura White, Team Leader, Psychiatric Hospitals, DSOHF, began the rules presentation with an introduction of her colleagues: Dr. Steven D. Peters, Dr. John Helminski, Dr. Mark Hazelrigg, and Dr. David Hattem. Ms. White advised that a workgroup had been established to address the language content of the proposed rules required by Session Law 2013-18, *Incapacity to Proceed Amendments*. The workgroup included staff of DMH/DD/SAS and DSOHF, some of the doctors from the forensics team, Commission members Dr. Olley, Dr. Richard Brunstetter, and Mr. Oliver, as well as representatives of NAMI and Disability Rights North Carolina. The Rules Committee reviewed the proposed changes at its July meeting; the Executive Leadership Team of the DMH/DD/SAS reviewed the rule and provided recommendations as well. Ms. White's presentation focused on two parts: the rules and the guidelines required by S.L. 2013-18. An overview and recommended changes to the rules are outlined below.

10A NCAC 27G .6702 - Operations

The word *certification* will replace *registration* throughout the rules, because certification is consistent with the language of the legislation; furthermore, certification indicates an individual went through a process, whereas registration implies an individual signed up for something. The language is clarified throughout the rules to use the term *forensic evaluators*, because that is what is stated in the statute. The language has been updated to replace *area programs* with *Local Management Entity-Managed Care Organization (LME-MCO)*.

10A NCAC 27H .0201 - Scope

The word *certified* is used to replace *registered* with the same meaning as specified in Rule 27G. 6702, *Operations*. Line 8 includes the requirements for an individual to be a certified evaluator. The rule has been updated to require that an individual be licensed in order to become a certified forensic evaluator – hence use of the term Licensed Clinician as defined in Rule 10A NCAC 17G .0104, *Staff*. An exception will be provided for those currently conducting the forensic evaluations without a license. Specifically, a grandfather clause will be added to the rules to allow those individuals who met the criteria as a forensic evaluator as of December 1st; they will be allowed to continued conducting these evaluations, under the grandfather clause, so long as they meet the other criteria of the rule. According to Dr. Hattem, the number of individuals this applies to is less than 10. The Commission requested assurance that grandfathering these individuals will not endanger anyone.

10A NCAC 27H .0202 - Definitions

New language is included in this rule for a Local Certified Forensic Evaluator to mean a licensed clinician and to include training. Dr. Finch questioned why physician assistant cannot be added to Rule 10A NCAC 27G. 0104. Ms. Baker advised that physician assistant is not included in the definition provided for licensed clinician; hence, a statement or line must be added to Rule 10A NCAC 27G. 0104 if physician assistants are to be included among those able to conduct forensic evaluations.

10A NCAC 27H .0203 - Eligibility for Training

In line 6, the Commission recommended changing the language to his/her to permit gender neutral language to be included in the rule. Ms. Baker indicated that his/her is not permitted in rule; the pronoun "his" is treated as gender neutral in this context.

10A NCAC 27H .0204 - Training and Certification

Ms. White clarified line 10, under (2) *changes in current laws and current practices*; this statement, as written, will allow the rule to always reflect the current laws and practices whenever changes are made. She also added that in line 11, on (3) *evaluation of mh/dd/sa populations*, there may be a need to have one session to include an evaluation of intellectual and other developmental disabilities (I/DD) populations. The Commission recommended the word *may* be changed to *shall* on line 7. They also raised questions about availability of funding for training resources; Ms. White responded that because resources were not provided by the state legislature, resources will be sought by DSOHF internally. Suggestions were made about using video conferencing and teleconferencing as avenues to address these issues. Mr. Owen, Commission member, also recommended that computerized training similar to the on-line ethics training should also be explored.

10A NCAC 27H .0205 - LME-MCO Oversight of Forensic Evaluation Program

Ms. White explained this is a new section which provides oversight of the Forensic Evaluation Program. As part of this section, they want to set up a process to ensure LME-MCOS are more involved in order to have a stronger quality improvement process within the community setting.

The following changes were made: on lines 6 and 7, the sentence on currently employed or contracted by the LME-MCO that includes the population for which each evaluator has reported having to be changed to *includes the population for which each LME-MCO have determined*. The Commission also recommended changing the LME-MCO shall maintain a *log* to the word, *list* in lines 13-14.

10A NCAC 27H .0206 - Termination of Certification

The Commission suggested the word *seminars* be changed to *requirements* in line 8. Ms. White responded to a question from Dr. Finch about the reactivation of evaluators; she advised that evaluators are either active or inactive. The Commission also requested language added to the rule to indicate as long as evaluators have done their annual training, if they become unemployed or change MCOs, the evaluator can still maintain certification.

10A NCAC 27H .0207 - Duties of Certified Forensic Evaluator

Dr. Hattem presented the rule. He recommended a change on line 13 as follows: if the forensic examiner is not able to form an opinion about the defendant's capacity and the defendant is charged with a felony, the evaluator recommends a full evaluation. He also added if the screener cannot form an opinion on a misdemeanor, the screener should tell the court he cannot form an opinion, because that's the way the law is written. Ms. Baker suggested language be added to the rule regarding the latter.

Upon motion, second, and unanimous vote, the Commission approved the rules as amended.

Ms. Baker concluded the discussion on the rules by advising the Commission the rules must be effective by December 1, 2013; therefore it is her recommendation that the rules be adopted as temporary rules. She further advised the Commission must convene a public hearing and suggested that the body meet at 11:00 am at the October 24th Advisory and Rules Committee meetings in order to avoid calling a special

session. The rules adoption process should be completed by the conclusion of the November full Commission meeting.

Presentation and Discussion: Proposed Guidelines of Treatment of Individuals Involuntarily Committed Subsequent to a Determination of Incapacity to Proceed (required by Session Law 2013-18, Incapacity to Proceed Amendments)

Ms. White advised the Commission of their authority to adopt the Guidelines for *Treatment of Individuals Involuntarily Committed Subsequent to a Determination of Incapacity to Proceed (required by Session Law 2013-18, Incapacity to Proceed Amendments)*. Dr. Steven D. Peters, Clinical Psychology Director at Cherry Hospital, presented the proposed guidelines to the Commission for discussion and adoption. A revised copy of the proposed guidelines was disseminated to the Commission, which included only word smithing with no substantial change in content.

Upon motion, second, and unanimous vote, the Commission approved the Guidelines for Treatment of Individuals Involuntarily Committed Subsequent to a Determination of Incapacity to Proceed (required by Session Law 2013-18, Incapacity to Proceed Amendments).

Ms. Baker and Mr. Hairston informed the Commission of their upcoming discussion on avenues to ensure the guidelines are available to the LME-MCO Directors for comment. They also advised the guidelines can be posted on the Commission's web page for review and comment.

Public Comment Period

Margaret Withrow, who identified herself as a mental health consumer and advocate as well as disabled registered nurse from Western NC, commented on two issues: the meeting minutes posted, of lack thereof, on the Commission's webpage and her concerns about the use of telepsychiatry. She shared that telepsychiatry as she has experienced it, was a negative and uncomfortable experience.

Ms. Baker explained the minutes on the Commission's webpage are only posted after they have been officially approved by the body responsible for generating the minutes at the next meeting thereof. For example, the Commission approved the minutes of its May 2013 meeting at its August 25, 2013, meeting. As such, those minutes can now be posted to the Commission's webpage. Therefore, the web site is current.

There being no further business, the meeting adjourned at 3:12 pm.